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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

20 UNITED STATES OF AMERICA ex rel.) Case No. 3:13-cv-03891-EMC
RONDA OSINEK,)
21 Plaintiff,) **UNITED STATES' UNOPPOSED EX PARTE**
22 v.) **MOTION TO CONSOLIDATE CASES;**
23 KAISER PERMANENTE,) **[PROPOSED] ORDER**
24 Defendant.)
25) **FILED UNDER SEAL**

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1 UNITED STATES OF AMERICA ex rel.) Case No. 3:16-cv-01558-EMC
2 NASER AREFI, AJITH KUMAR, and PRIME)
3 HEALTHCARE SERVICES,) **UNITED STATES' UNOPPOSED EX PARTE**
4 Plaintiffs,) **MOTION TO CONSOLIDATE CASES;**
5 v.) **[PROPOSED] ORDER**
6 KAISER FOUNDATION HEALTH PLAN,)
7 INC., et al.,)
8 Defendants.)
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11 UNITED STATES OF AMERICA ex rel.) Case No. 3:16-cv-05337-EMC
12 MARCIA STEIN AND RODOLFO BONE,)
13 Plaintiffs,) **UNITED STATES' UNOPPOSED EX PARTE**
14 v.) **MOTION TO CONSOLIDATE CASES;**
15 KAISER FOUNDATION HEALTH PLAN,) **[PROPOSED] ORDER**
16 INC., et al.,)
17 Defendants.)
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20 UNITED STATES OF AMERICA and STATE) Case No. 3:18-cv-01347-EMC
21 OF CALIFORNIA ex rel. GLORYANNE)
22 BRYANT and VICTORIA M. HERNANDEZ,) **UNITED STATES' UNOPPOSED EX PARTE**
23 Plaintiffs,) **MOTION TO CONSOLIDATE CASES;**
24 v.) **[PROPOSED] ORDER**
25 KAISER PERMANENTE, INC., et al.,)
26 Defendants.)
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1 UNITED STATES OF AMERICA and STATE) Case No. 3:21-cv-03124-EMC
2 OF CALIFORNIA ex rel. MICHAEL)
3 BICOCCA,) **UNITED STATES' UNOPPOSED EX PARTE**
4 Plaintiff,) **MOTION TO CONSOLIDATE CASES;**
5 v.) **[PROPOSED] ORDER**
6 PERMANENTE MEDICAL GROUP, INC., et)
7 al.,)
8 Defendants.)
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11 UNITED STATES OF AMERICA ex rel.) Case No. 3:21-cv-03894-EMC
12 JAMES M. TAYLOR,)
13 Plaintiff,) **UNITED STATES' UNOPPOSED EX PARTE**
14 v.) **MOTION TO CONSOLIDATE CASES;**
15 KAISER PERMANENTE, INC., et al.,) **[PROPOSED] ORDER**
16 Defendants.)
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INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 42(a), the United States respectfully requests that the Court consolidate the following six qui tam actions, which are all designated as related:

1. *United States ex rel. Osinek v. Kaiser Permanente*, No. 3:13-cv-03891-EMC (N.D. Cal.) (UNDER SEAL);
2. *United States ex rel. Arefi v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-01558-EMC (N.D. Cal.) (UNDER SEAL);
3. *United States ex rel. Stein v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-05337-EMC (N.D. Cal.) (UNDER SEAL);
4. *United States ex rel. Bryant v. Kaiser Permanente*, No. 3:18-cv-1347-EMC (N.D. Cal.) (UNDER SEAL);
5. *United States ex rel. Bicocca v. Permanente Medical Group, Inc.*, No. 3:21-cv-03124-EMC (N.D. Cal.) (UNDER SEAL); and
6. *United States ex rel. Taylor v. Kaiser Permanente*, No. 3:21-cv-03894-EMC (N.D. Cal.) (UNDER SEAL).

The United States respectfully submits that consolidation is warranted because these six qui tam actions are brought against common defendants — related Kaiser Permanente (“Kaiser”) entities — and involve common questions of fact and law, and because consolidation will significantly promote judicial economy.

This motion is being filed under seal because the six qui tam actions are currently sealed pursuant to the False Claims Act (“FCA”), 31 U.S.C. § 3729–33. Due to the sealed nature of all six cases and because Defendants have not yet been served in these cases, this notice is not being served on Defendants. The United States has conferred with Relators in all six cases, and none of the Relators opposes this motion.

DISCUSSION

Federal Rule of Civil Procedure 42(a) provides that “[i]f actions before the court involve a common question of law or fact, the court may . . . consolidate the actions[.]”

“[A] district court has broad discretion under [Rule 42(a)] to consolidate cases pending in the

same district.” *Investors Research Co. v. U.S. Dist. Ct.*, 877 F.2d 777, 777 (9th Cir. 1989). In determining whether or not to consolidate cases, the court should “weigh the interest of judicial convenience against the potential for delay, confusion and prejudice.” *Zhu v. UCBH Holdings, Inc.*, 682 F. Supp. 2d 1049, 1052 (N.D. Cal. 2010). “[T]ypically, consolidation is favored.” *Tse v. Apple, Inc.*, No. C 12-0265, 2013 WL 451639, at *3 (N.D. Cal. Feb. 5, 2013).

The six qui tam actions each raise claims under the FCA to recover damages to the government due to allegedly fraudulent conduct of Kaiser Permanente, a health care consortium headquartered in Oakland, California. The six actions each allege that Kaiser submitted claims to the Medicare Advantage Program, also known as Medicare Part C, for risk-adjustment payments for diagnoses that its patients did not actually have and/or that were not actually addressed by the treating physician during a patient encounter as required by Medicare billing rules. The United States is the real party in interest in all six actions, the defendants are the same or related Kaiser entities in all six actions, and the six actions involve common questions of fact and law. Because of their commonality, the six actions likely will involve the same or similar discovery and motions practice and, if the actions proceed to trial, the same or similar witnesses, evidence, and exhibits. In light of the commonality between the six actions, consolidating the actions will conserve judicial resources and promote the efficient conduct and determination of the actions.

CONCLUSION

19 The United States respectfully requests that the Court consolidate the *Osinek, Arefi, Stein,*
20 *Bryant, Bicocca, and Taylor* actions. A proposed order is attached.

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1 DATED: June 11, 2021

Respectfully submitted,

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18 Attorneys for the United States

1 **[PROPOSED] ORDER**

2 The Court, having considered the United States of America's Unopposed Ex Parte Motion to
3 Consolidate Cases, hereby orders that the following actions shall be consolidated for all purposes:

- 4 1. *United States ex rel. Osinek v. Kaiser Permanente*, No. 3:13-cv-03891-EMC (N.D. Cal.)
5 (UNDER SEAL);
- 6 2. *United States ex rel. Arefi v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-01558-
7 EMC (N.D. Cal.) (UNDER SEAL);
- 8 3. *United States ex rel. Stein v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-05337-
9 EMC (N.D. Cal.) (UNDER SEAL);
- 10 4. *United States ex rel. Bryant v. Kaiser Permanente*, No. 3:18-cv-1347-EMC (N.D. Cal.)
11 (UNDER SEAL);
- 12 5. *United States ex rel. Bicocca v. Permanente Medical Group, Inc.*, No. 3:21-cv-03124-
13 EMC (N.D. Cal.) (UNDER SEAL); and
- 14 6. *United States ex rel. Taylor v. Kaiser Permanente*, No. 3:21-cv-03894-EMC (N.D. Cal.)
15 (UNDER SEAL).

16 The Parties shall file all future pleadings and other filings in the consolidated actions on the
17 docket in Case No. 3:13-cv-03891-EMC (N.D. Cal.).

18 IT IS SO ORDERED.

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20 DATED: June 25, 2021



21 HON. EDWARD M. CHEN
22 United States District Judge